THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4706 OF 2006

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Dated: 09-03-2006

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Between

Dr. S. Ramachandra Reddy,

S/o. S. Viswamanath Reddy,

Occ: Doctor, Plot No.646,

Sriramnagar Colony,

Puppalaguda, Hyderabad

and others.

...PETITIONERS

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Hyderabad

and another.

...RESPONDENTS

ORDER:

Petitioners seek a writ of mandamus to declare the notice dated 08-03-2006 in letter No.12/TPS/C5/ MCH/2006 issued under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') by the first respondent as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioners submits that the petitioners are the owners of the shops in Vardhaman Apartments situated at Srinagar Colony, Hyderabad. He further submits that the owners of Plot No.121 admeasuring 1107 sq. yards situated at Srinagar Colony, Hyderabad developed the property by constructing a five storied building after obtaining necessary permission from the municipality vide permit No.255/72 dated 24.03.1990 and after construction of the building the individual rooms facing the road have been purchased and the petitioners are running small businesses and separate parking area has been earmarked for the residents of the apartments for parking their vehicles. While so, the respondents without any show cause notice have issued a notice in letter No.12/TPS/C5/MCH/2006, dated 08-03-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in the order in

suo-motto contempt case in C.C.No.101 of 1996, dated 28-2-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structure within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the construction has been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case,

the impugned notice is directed to be treated as a show cause notice only permitting the petitioners to file an explanation/representation within one week from the date of receipt of a copy of this order and

till the said representation is considered and appropriate orders are passed and communicated to the petitioners, the respondents shall not remove or demolish the shops or premises of the petitioners.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 9, 2006

Note: Furnish C.C. of the order by 10.03.2006

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